

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

13	GSI TECHNOLOGY, INC.,	)	Case No. 5:13-cv-01081-PSG
14		)	
15	Plaintiff,	)	<b>ORDER RE: MOTIONS TO SEAL</b>
16		)	
17	v.	)	<b>(Re: Docket Nos. 786, 799, 889)</b>
18	UNITED MEMORIES, INC., et al.,	)	
19		)	
20	Defendants.	)	
21		)	

Before the court are three motions to file ten documents under seal.<sup>1</sup> “Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’”<sup>2</sup> Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.”<sup>3</sup> Parties seeking to seal judicial records

<sup>1</sup> See Docket Nos. 786, 799, 889.

<sup>2</sup> *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)).

<sup>3</sup> *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

1 relating to dispositive motions bear the burden of overcoming the presumption with “compelling  
2 reasons” that outweigh the general history of access and the public policies favoring disclosure.<sup>4</sup>

3 However, “while protecting the public's interest in access to the courts, we must remain  
4 mindful of the parties' right to access those same courts upon terms which will not unduly harm  
5 their competitive interest.”<sup>5</sup> Records attached to nondispositive motions therefore are not subject  
6 to the strong presumption of access.<sup>6</sup> Because the documents attached to nondispositive motions  
7 “are often unrelated, or only tangentially related, to the underlying cause of action,” parties moving  
8 to seal must meet the lower “good cause” standard of Rule 26(c).<sup>7</sup> As with dispositive motions, the  
9 standard applicable to nondispositive motions requires a “particularized showing”<sup>8</sup> that “specific  
10 prejudice or harm will result” if the information is disclosed.<sup>9</sup> “Broad allegations of harm,  
11 unsubstantiated by specific examples of articulated reasoning” will not suffice.<sup>10</sup> A protective  
12 order sealing the documents during discovery may reflect the court’s previous determination that  
13 good cause exists to keep the documents sealed,<sup>11</sup> but a blanket protective order that allows the  
14 parties to designate confidential documents does not provide sufficient judicial scrutiny to  
15 determine whether each particular document should remain sealed.<sup>12</sup>

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<sup>4</sup> *Id.* at 1178-79.

18 <sup>5</sup> *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1228-29 (Fed. Cir. 2013).

19 <sup>6</sup> *See id.* at 1180.

20 <sup>7</sup> *Id.* at 1179 (internal quotations and citations omitted).

21 <sup>8</sup> *Id.*

22 <sup>9</sup> *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002);  
23 *see* Fed. R. Civ. P. 26(c).

24 <sup>10</sup> *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

25 <sup>11</sup> *See Kamakana*, 447 F.3d at 1179-80.

26 <sup>12</sup> *See* Civ. L.R. 79-5(d)(1)(A) (“Reference to a stipulation or protective order that allows a party to  
27 designate certain documents as confidential is not sufficient to establish that a document, or  
28 portions thereof, are sealable.”).

In addition to making particularized showings of good cause, parties moving to seal documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(d).”<sup>13</sup> “Within 4 days of the filing of the Administrative Motion to File Under Seal, the Designating Party must file a declaration as required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.”<sup>14</sup>

With these standards in mind, the courts rules on the instant motions as follows:

<b><u>Motion</u></b>	<b><u>Document to be Sealed</u></b>	<b><u>Result</u></b>	<b><u>Reason/Explanation</u></b>
Docket No. 786-5	ISSI’s Motion to Exclude Malackowski Report	Designations highlighted in blue at 4:21; 12:11; 16:28-17:1; in yellow at 4:22; 4:24; 4:27; 5:2; 5:14; 13:19-20; in purple at 3:22-23; 4:7-8; 4:14-15; 12:13-14; 12:21-23; 13:11;	Only sealed portions narrowly tailored to confidential business information and supported by a declaration.

<sup>13</sup> Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable material” which “lists in table format each document or portion thereof that is sought to be sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unreadacted version of the document” that indicates “by highlighting or other clear method, the portions of the document that have been omitted from the redacted version.” Civ. L.R. 79-5(d)(1)(d).

<sup>14</sup> Civ. L.R. 79-5(e)(1).


<u>Motion</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reason/Explanation</u>
		13:13; 13:14-17; 14:28-15:1; 15:5-8; 15:15-16; in green at 12:10-12; and 13:26-28 SEALED; remainder UNSEALED.	
Docket No. 786-7	Ex. A to Baskin Decl. In Support Of ISSI's Motion to Exclude	Designations highlighted in yellow, pink and blue SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
Docket No. 786-8	Ex. B to Baskin Decl. In Support Of ISSI's Motion to Exclude	SEALED.	Narrowly tailored to confidential business information.
Docket No. 786-10	Ex. C to Baskin Decl. In Support Of ISSI's Motion to Exclude	Designations highlighted in purple at 41:11-42:24; 85:1-13; 86:19-87:1; 88:14-22; 89:10-91:17; 97:12-25; 99:14-103:3; 126:1-127:24; and 129:1-22 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information and supported by a declaration.
Docket No. 786-12	Ex. D to Baskin Decl. In Support Of ISSI's Motion to Exclude	Designations highlighted in purple at 118:5-8; 119:4-14 139:2-3; and 139:16-140:9 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information and supported by a declaration.
Docket No. 786-13	Ex. E to Baskin Decl. In Support Of ISSI's Motion to Exclude	SEALED.	Narrowly tailored to confidential business information.
Docket No. 786-15	Ex. F to Baskin Decl. In Support Of ISSI's	Designations highlighted in blue	Only sealed portions narrowly tailored to confidential business

<b><u>Motion</u></b>	<b><u>Document to be Sealed</u></b>	<b><u>Result</u></b>	<b><u>Reason/Explanation</u></b>
	Motion to Exclude	at 150:1-151:11 and 152:14-25 SEALED; remainder UNSEALED.	information.
Docket No. 786-16	Ex. H to Baskin Decl. In Support Of ISSI's Motion to Exclude	Designations requested at GSI10099382 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information and supported by a declaration.
Docket No. 799-4	GSI's Trial Brief	Designations highlighted in pink at 7:2-3; 10:17-19; 13:23; 20:19-21:1; 21:5-6; and designations highlighted in yellow at 5:6-9; 5:24-26; 6:19-21; 10:2; 10:8-9; 10:12-13; 10:19-12; 12:4-10; 18:7-8; 20:4-6; 20:10-13; 21:3-4; and 25:17-18 SEALED; remainder UNSEALED.	Only sealed portions narrowly tailored to confidential business information and supported by a declaration.
Docket No. 889-4	July 17, 2015 Deposition of Expert Robert J. Murphy	Designations requested at 134:22-135:4; 135:9-24; 136:1-4; 136:12-137:11; 137:25-138:7; 138:22-139:4; 139:16-140:13; 150:2-151:9; 151:22-152:9;	Only sealed portions narrowly tailored to confidential business information and supported by a declaration.

<u>Motion</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reason/Explanation</u>
		154:7-9; 155:11-14; 156:8-16; 156:24-157:24; 160:10-162:5; 165:8-167:2; 168:5-22; 177:11-179:20; 182:13-184:5; 184:10-21; 185:1-16; 258:16-260:25; 338:1-24; 360:23-363:7; 364:18-365:11; and 368:5-368:25 SEALED; remainder UNSEALED	

**SO ORDERED.**

Dated: October 21, 2015

  
 PAUL S. GREWAL  
 United States Magistrate Judge